



# Document Title: Standard Terms and Conditions of Sale

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| Revision Level | Revision Date | Approved by: | Description of Revision                                  | Revision Author |
|----------------|---------------|--------------|--|-----------------|
| A              | 01/01/2010    |              | Initial release of Standard Terms and Conditions of Sale | M. Camren       |
| B              | 08/24/2015    |              | Revisions made to various sections of the form           | D. Moore        |
| C              | 12/01/2015    | D. Chandler  | New format of form                                       | S. Mills        |
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This publication sets forth the standard sales policy of WestOak Industries, Inc. (WestOak). The terms and conditions set forth below constitute the entire agreement between WestOak and Customer, unless otherwise agreed to in writing by WestOak.

### **1. Confidential Information**

Except as required by law, neither party shall use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party any information of the other it reasonably knows to be confidential.

### **2. Ordering**

(a) Performance under this agreement shall be initiated by Orders issued by Customer and accepted by WestOak. Customer is under no obligation to purchase, and WestOak is under no obligation to manufacture, products unless and until Customer issues an Order and WestOak has accepted Customer's Order. Customer's Orders shall set forth for each ordered product: quantity, purchase price and total price, delivery and shipping instructions and requested delivery schedule. All Orders are subject to and governed by the terms and conditions of this Agreement, which shall not be changed or supplemented by an accepted Order unless such changed or supplemental terms and conditions are stated on the face of the Order. Customer acknowledges that pre-printed terms and conditions on its Order form, if any, shall not apply to the Order.

(b) WestOak shall use reasonable commercial efforts to accept all Customer Orders. No Order shall be deemed accepted unless WestOak provides Customer written notice accepting the Order.

(c) Orders may be modified or cancelled, and scheduled shipments may be deferred, only (i) upon Customer's prior written notice and WestOak's written acknowledgment and (ii) upon terms, satisfactory to WestOak, that compensate WestOak for all costs incurred by reason of such modification, cancellation or deferment, which shall take into account, among other things, the cost of any Non-cancellable Non-returnable (NCNR) Inventory, any vendor cancellation charges (including restocking fees) and any nonrecurring engineering or production costs and the impact on the purchase prices of products not cancelled.

(d) If Customer moves in a delivery date (expedite production) or does not allow for normal lead times on an Order, said Order shall be subject to any additional charges for material which WestOak incurs from its vendors and/or increased labor costs as a result of increased labor (overtime). Expediting orders may only be accomplished when production and supplier schedules permit.

### **3. Forecasts**

(a) Forecasts submitted to WestOak by Customer will be used to help determine the Purchase Price for forecasted products. Customer will notify WestOak promptly in writing if and when Customer determines that it will not order at least the estimated quantity set forth in the forecast for a product during the forecast period.

(b) If, during the forecast period, Customer fails to purchase at least the estimated quantity set forth in the forecast for a product, the purchase price for that product will be adjusted to reflect the impact of the Customer's failure to purchase the estimated quantity, and WestOak shall be compensated for otherwise unrecoverable costs reasonably incurred by WestOak in reliance on the forecast or as a result of Customer's failure to purchase the estimated quantity, including but not limited to: any NCNR Inventory or other unused Inventory specifically ordered for Customer in WestOak's possession (plus WestOak's standard material handling fee), any vendor cancellation charges (including restocking fees) and any nonrecurring engineering or production costs. WestOak will submit its request for an equitable adjustment and additional compensation no later than sixty (60) days after the end of the applicable forecast period.

(c) Customer acknowledges that WestOak may order Inventory in advance of the forecast under certain circumstances. Customer agrees that if any such Inventory purchased in advance of the forecast is not used for Customer's Orders and cannot be returned or used on other orders, or as the parties may otherwise mutually and expressly agree, then Customer shall purchase such Inventory at WestOak's cost. In addition, WestOak shall be compensated for unrecoverable costs reasonably incurred by WestOak,

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including but not limited to any vendor cancellation charges. WestOak will make a reasonable effort to return unused Inventory specifically purchased for Customer and to cancel pending orders with suppliers.

(d) Upon WestOak's receipt of payment for any Inventory under Sections 2 (b) and (c), Customer shall have the option to direct WestOak to ship to Customer, at Customer's cost, the Inventory, or as the parties may otherwise mutually agree.

#### **4. Shipment and Delivery**

WestOak shall ship products in accordance with each accepted order, subject to the General Terms and Conditions of Sales. Delivery of Products shall be made F.O.B. at the loading dock of WestOak's facility on the dates specified in the applicable order. Title to, and risk of loss for, products shall pass to Customer at the time of delivery of possession of the products to a common carrier. Customer will pay for storage charges if WestOak holds products at Customer's request pending instructions or rescheduled delivery.

#### **5. Acceptance**

(a) Products are deemed accepted by Customer unless Customer notifies WestOak within ten (10) business days of delivery of product shortages or damage.

(b) If Customer refuses to accept tender or delivery of any products or returns any products without authorization from WestOak, such products will be held by WestOak awaiting Customer's instruction for twenty (20) business days, after which WestOak may deem the products abandoned and dispose of them as it sees fit, without crediting Customer's account. Returned product is subject to WestOak's Return Policy.

#### **6. Prices; Price Changes; Other Costs; Invoicing**

(a) Prices do not include any taxes, freight, handling, duty, or other similar charges, payment of which will be the sole responsibility of Customer. Prices for active product will be reviewed by WestOak on at least an annual basis, or at the request of Customer. Prices are agreed to by WestOak and Customer, and are subject to change.

(b) Price Quotations (Quotes) shall be void after thirty (30) days unless otherwise specified.

(c) In addition to other provisions in this publication allowing for changes in the purchase price, if significant fluctuations occur at any time in the costs of Inventory, WestOak will review the impact of such fluctuations and submit to Customer an increase or decrease in the purchase price arising for products whose costs are affected by such fluctuations and have not yet been produced, ordered or shipped.

(d) Customer shall pay for, or obtain and consign to WestOak, any product-specific tooling and shall prepay other non-recurring expenses. Upon request by Customer, WestOak shall return all items paid for by Customer pursuant to this Section 5(d).

(e) WestOak shall invoice Customer concurrently with each shipment of products. Unless otherwise stated, payment is due NET 30 business days from the date of invoice, without regard to the date of delivery of goods. Payments shall be made in U.S. dollars. Any payment that is not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month, from its due date until paid.

#### **7. Engineering Changes and Cost Savings**

Customer may request in writing that WestOak incorporate an engineering change into a product. Such request shall include a description of the proposed change sufficient to permit WestOak to evaluate it. WestOak's evaluation shall be in writing and shall state the impact of the requested change on delivery schedule and expected cost. WestOak shall not be obligated to proceed with the requested engineering change until both parties have agreed on the changes to the product, specifications, delivery schedule and pricing, including without limitation the cost to be paid by Customer for re-assembly, retooling and Inventory on hand and on order that becomes obsolete. Pricing for obsolete Inventory as a result of such change shall be based upon the cost of such Inventory plus WestOak's standard material handling fee. Any cost reduction programs may also have an effect on the purchase price.

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## 8. Force Majeure

WestOak shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of God, acts of Customer, acts of civil or military authority, war, riots, labor disputes, shortages of materials, or any other causes beyond the reasonable control of WestOak. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

## 9. Warranty

(a) Products assembled by WestOak are granted full warranty by WestOak for a period of fifteen (15) months from the date of shipment against manufacturing defects in material and workmanship. WestOak will repair or replace a product that has been returned for nonconformance provided Customer has not attempted modification, repairs or component replacement. The product must be returned to WestOak within fifteen (15) months of the date of manufacture to be eligible for full warranty. The date code on the product (date of manufacture and lot number) will be examined to validate warranty eligibility. If the product is not confirmed for eligibility, any repairs will be considered non-warranty.

(b) Options under this limited warranty are repair or replacement of any item at no charge, or a credit for the amount of the item, at WestOak's discretion, if WestOak determines that such item is in fact defective. This warranty does not cover damage to any item, if, in WestOak's opinion, damage has been caused by improper customer assembly or modification, negligence, improper operation, misuse, or abuse.

(c) WestOak has a commitment to follow your product through the life of the product. Therefore, products that have been deemed non-warranty will be treated as warranty repairs to the extent the repair is under \$50.00 additional parts and labor and will be covered by WestOak. Non-Warranty repairs over the \$50.00 threshold will be parts plus the hourly rate and shipping cost will be charged to Customer

## 10. Returns

(a) Products being returned to WestOak must have a Returned Materials Authorization (RMA) number assigned by WestOak. The RMA number must be referenced on all paperwork accompanying the return/repair. RMA numbers may be obtained by calling or emailing the sales department with the item's part number, date code, quantity being returned, and a detailed reason for return. The issuance of an RMA number shall not constitute a binding obligation on behalf of WestOak to repair or replace such product.

(b) Items that do not reference an RMA number will not be processed. Returned products must be in a complete condition; products showing obvious signs of use, modification, and/or physical damage are subject to refusal; they may be deemed not returnable and no credit shall be offered.

(c) WestOak will determine upon inspection if an item is eligible for warranty repair or replacement. If it is determined that there is no warranty, at WestOak's option the item will be repaired at WestOak's prevailing repair rates at the customer's expense (see item 9c for further explanation).

(d) WestOak uses EOS/ESD procedures. Products must be packaged properly in ESD protection. Improper packaging could be cause for rejection.

(e) Returned products must be received by WestOak within fifteen (15) business days of an RMA number assignment. All risk of loss or damage during shipment shall be borne to the customer. Customer shall be responsible for shipping charges back to WestOak. WestOak reserves the right to refuse returned merchandise not meeting the above conditions or to assess additional fees.

(f) No credit will be issued until the returned product has been evaluated by WestOak to determine if the item is repairable or eligible for warranty.

## 11. Disclaimer

The warranty stated above is in lieu of all other warranties, conditions or other terms, express or implied, statutory or otherwise, including without limitation any implied warranties of terms as to quality, fitness for particular purpose, merchantability or otherwise, including without limitation any implied warranties of terms as to quality, fitness for particular purpose, merchantability or otherwise, whether implied by custom or law. Without limiting the foregoing disclaimer, Customer understands, acknowledges and agrees that

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WestOak does not warrant any parts, components or other materials used in the manufacture of the Products.

**12. Limitation of Liability**

WestOak is not responsible for incidental or consequential damages, including, without limitation, lost profits, lost use of other goods, and lost data even if advised of the possibility of such damage or if such damage could have been reasonably foreseen, except only in the case of personal injury where applicable law requires such liability.

**13. Governing Law**

These conditions, the orders and any agreement related thereto shall be governed by, and shall be construed and enforced in accordance with the internal laws of the State of Oklahoma, without regard to the conflicts of law principles, including, but not limited to, the provisions of the Oklahoma Uniform Commercial Code.

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